HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE P. LAKSHMANA REDDY

WRIT APPEAL No. 238 OF 2006

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Between:

A.P. Valmiki Safai Karmachari Samithi,

Represented by its President Dharamveer

S/o Prema Singh, aged about 27 years,

H.No.5-2-257, Gowliguda, Hyderabad

……Appellant/Petitioner

And

The Regional Manager, A.P.S.R.T.C,

O/o the Regional Manager, /RR, MGBS,

Imlibun, Hyderabad and four others

……Respondents/Respondents

:: JUDGMENT ::

Counsel for the Appellant : Smt. T.H.Sowbhagya

Lakshmi

Counsel for Respondent Nos.1 to 4 : Sri V.T.M. Prasad

Counsel for Respondent No.5 : Sri M. Srinivas Reddy

Dated: 10-04-2006

Per G.S. SINGHVI, CJ

Having failed to persuade the learned Single Judge to entertain its challenge to the decision of Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation') to terminate the contract of maintenance of toilet blocks, sweeping, cleaning, washing of bus station, yard and its premises at Mahatma Gandhi Bus Station, Hyderabad, the appellant has filed this appeal.

In furtherance of advertisement dated 3.3.2004 issued by the Corporation, the appellant submitted tender for award of contract for maintenance of toilet blocks, sweeping etc., at Mahatma Gandhi Bus Station. The Corporation accepted the tender of the appellant and awarded two years contract to it commencing from 16.4.2004. After one year and about three months, Divisional Manager, Ranga Reddy Division of the Corporation issued notice dated 11.7.2005 to the president of the appellant requiring him to show cause against the proposed termination of contract in terms of Item Nos.4, 7, 9, 14, 15, 29, 30 and 36 of the Deed of Licence. In his reply dated 16.7.2005, the president of the appellant controverted the allegations regarding violation of the conditions of licence. Thereafter, by an order dated 26.10.2005, the concerned Divisional Manager terminated the contract and forfeited

the security deposit of the appellant.

The appellant challenged the termination of contract in Writ Petition No.27697 of 2005. In the affidavit filed by the president of the appellant - Shri Dharamveer, it was pleaded that the termination of contract was wholly arbitrary and vitiated due to violation of the rules of natural justice because the reply filed in response to the show cause notice had not been considered in a correct perspective and no reason was assigned for rejecting the same.

In the counter-affidavit filed on behalf of the Corporation, it was averred that the contract was terminated because despite repeated communications and reminders, the writ petitioner (appellant herein) failed to abide by the conditions of licence and its failure to clean and maintain the premises of Mahatma Gandhi Bus Station was causing serious inconvenience to the public. It was further averred that after taking into consideration the complaints received from the public, show cause notice was issued to the petitioner (appellant herein) and decision to terminate the contract was taken after duly considering the reply.

The learned Single Judge dismissed the writ petition by observing that the claim of the writ petitioner was founded on non-statutory contract and remedy against the unlawful breach of such contract was by way of civil suit. The learned Single Judge noted that as per Clause 22 of the Deed of Licence dated 16.4.2004, all disputes are required to be referred to the Vice-Chairman and Managing Director of the Corporation and held that there was no valid ground to entertain the writ petition.

We have heard learned counsel for the appellant at length and carefully perused the record. In our opinion, the order under challenge does not suffer from any legal infirmity warranting interference by the Division Bench. The reasons for this conclusion of ours are:

i. Even if the contract awarded to the appellant had not been terminated, its term would have come to an end on 15.4.2006. Therefore, at this stage, no effective relief can be granted to the appellant.

ii. The appellant has already availed the alternative remedy of civil suit. It filed O.S No.6895 of 2005 in the Court of III Junior Civil Judge, City Civil Court, Hyderabd. In I.A No.1825 of 2005 filed for grant

of temporary injunction, the learned III Junior Civil Judge initially passed an order of interim stay but the same was vacated on 19-12-2005. In our opinion, after having availed the remedy by filing civil suit, the appellant cannot be allowed to turn around and seek intervention of this Court under Article 226 of the Constitution of India.

iii. In a matter which essentially lies in the realm of contract, the High Court cannot entertain the grievance made against the alleged illegal termination of contract. The limited scope of judicial review in such matters is where the contract is statutory in character and termination thereof is found to be vitiated due to violation of the statute or rules of natural justice. In the case before us, the appellant has failed to show that the contract was awarded to it in furtherance of some statutory provision. Therefore, breach of the terms of the contract cannot be made subject matter of challenge in a writ petition filed under Article 226 of the Constitution. In this connection, we may usefully refer to some Judgments of the Supreme Court. In **State of U.P. v. Bridge & Roof Co.(India) Ltd.**, the Supreme Court was called upon to consider whether the rates quoted by the contractor were inclusive of the sales tax, if any, on the constructional plants, materials and supplies required for the purpose of execution of the contract. The respondent, who was awarded contract for rehabilitation and improvement of certain stretch of road in Uttar Pradesh, applied to the Commissioner of Sales Tax, Uttar Pradesh for composition of tax liability. The Deputy Commissioner, Sales Tax, in exercise of the power delegated to him by the Commissioner, passed order dated 27-5-1992 that sales tax should be deducted at the rate of 1% at the time of payment of balance amount. After three years, the respondent filed writ petition in Allahabad High Court questioning the deduction of sales tax. The High Court did not go into the issue of maintainability of the writ petition, but disposed of the same by observing that the Government shall deduct only 1% of the bill in question up to 31-3-1995. While setting aside the High Court's order on merits, the Supreme Court held:

"15. In our opinion, the very remedy adopted by the respondent is misconceived. It is not entitled to any relief in these proceedings, i.e., in the writ petition filed by it. The High Court appears to be right in not pronouncing upon any of the several contentions raised in the writ petition by both the parties and in merely reiterating the effect of the order of the Deputy Commissioner made under the proviso to Section 8-D(1).

16. Firstly, the contract between the parties is a contract in the realm of private law. It is not a statutory contract. It is governed by the provisions of the Contract Act or, may be, also by certain provisions of the Sale of Goods Act. Any dispute relating to interpretation of the terms and conditions of such a contract cannot be agitated, and could not have been agitated, in a writ petition. That is a matter either for arbitration as provided by the contract or for the civil court, as the case may be. Whether any amount is due to the respondent from the appellant-Government under the contract and, if so, how much and the further question whether retention or refusal to pay any amount by the Government is justified, or not, are all matters which cannot be agitated in or adjudicated upon in a writ petition. The prayer in the writ petition, viz., to restrain the Government from deducting a particular amount from the writ petitioner's bill(s) was not a prayer which could be granted by the High Court under Article 226. Indeed, the High Court has not granted the said prayer.

17. Secondly, whether there has been a reduction in the statutory liability on account of a change in law within the meaning of sub-clause (4) of clause 70 of the contract is again not a matter to be agitated in the writ petition. That is again a matter relating to interpretation of a term of the contract and should be agitated before the arbitrator or the civil court, as the case may be. If any amount is wrongly withheld by the Government, the remedy of the respondent is to raise a dispute as provided by the contract or to approach the civil court, as the case may be, according to law. Similarly if the Government says that any overpayment has been made to the respondent, its remedy also is the same.

18. Accordingly, it must be held that the writ petition filed by the respondent for the issuance of a writ of mandamus restraining the Government from deducting or withholding a particular sum, which according to the respondent is payable to it under the contract, was wholly misconceived and was not maintainable in law. (See the decision of this Court in **Asstt. Excise Commr. v. Issac Peter** where the law on the subject has been discussed fully.) The writ

petition ought to have been dismissed on this ground alone.

21. There is yet another substantial reason for not entertaining the writ petition. The contract in question contains a clause providing inter alia for settlement of disputes by reference to arbitration (clause 67 of the contract). The arbitrators can decide both questions of fact as well as questions of law. When the contract itself provides for a mode of settlement of disputes arising from the contract, there is no reason why the parties should not follow and adopt that remedy and invoke the extraordinary jurisdiction of the High Court under Article 226. The existence of an effective alternative remedy — in this case, provided in the contract itself — is a good ground for the court to decline to exercise its extraordinary jurisdiction under Article 226. The said article was not meant to supplant the existing remedies at law but only to supplement them in certain well-recognised situations. As pointed out above, the prayer for issuance of a writ of mandamus was wholly misconceived in this case since the respondent was not seeking to enforce any statutory right of theirs nor was it seeking to enforce any statutory obligation cast upon the appellants. Indeed, the very resort to Article 226 — whether for issuance of mandamus or any other writ, order or direction — was misconceived for the reasons mentioned supra."

I n **Kerala State Electricity Board v. Kurien E.Kalathil**, the Supreme Court considered the issue relating to maintainability of the writ petition in a contractual matter. The facts of that case were that the appellant, State Electricity Board executed an agreement dated 16-9-1981 with the respondent contractor for construction of a dam. After the commencement of the work, the State Government revised, by notification dated 30-3-1983, the minimum wages payable to employees employed in the works mentioned in the notification, w.e.f 1-4-1983. The respondent contractor claimed that he began making the revised payments to his workers as required for the period 1-4-1983. Till December 1984, the Board reimbursed the respondent contractor. However, from January 1985 the Board stopped making the payments for labour escalation, contending that construction of a dam was not covered by the notification dated 30-3-1983. This disagreement was settled when the Industrial Tribunal made an award on 14-10-1993, holding that the

notification was applicable to dam construction (in case of workers employed for construction or maintenance of roads, or building operations and for stone-breaking or stone-crushing). The award became final. On 23-12-1994 the Board wrote the respondent demanding recovery with interest of Rs.3.65 crores, which had been paid in the form of advances for various heads of work. The respondent filed a writ petition seeking to have the letter of demand quashed and also praying for payment of the amounts paid in revised wages. While the petition was pending, the Board, by an order dated 26-2-1997 terminated the contract, which the contractor challenged by filing another petition. The High Court disposed of both petitions holding that the termination of the contract was arbitrary, unjust and not in public interest and directed the Board to pay the amounts claimed by the respondent along with interest at 18%. The Supreme Court partly allowed the appeal of the Board and held:

> "The interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily the remedy is not a writ petition under Article 226. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. ……..A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract

could not have been agitated in a petition under Article 226 of the Constitution of India. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies."

In **State of Jammu & Kashmir v. Ghulam Mohd. Dar,** the Supreme Court reiterated the settled rule that a writ of mandamus should not ordinarily be issued for enforcing the terms and conditions of a contract.

The documents brought on the record of the petition shows that before terminating the contract, the competent authority had issued a show cause notice and considered the reply submitted by the appellant. Though the order terminating the contract does not contain detailed reasons for rejecting the reply filed by the appellant to the show cause notice, we are not inclined to entertain its grievance on that count because, as mentioned above, an effective remedy is available to the appellant by way of civil suit which it had already availed.

In the result, the appeal is dismissed.

As a sequel to the dismissal of the main appeal, W.A.M.P No.496 of 2006 filed for suspension of operation of order dated 26-10-2005 passed by the learned Single Judge is also dismissed.

G.S.SINGHVI, CJ

P. LAKSHMANA REDDY, J

10-04-2006

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